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10/630,014	07/30/2003	Robert Rusin	37505.0222	8511
7590 06/19/2006				
Michael F. Scalise		EXAMINER		
Wilson Greatbatch Technologies, Inc.		LEE, CYNTHIA K		
10,000 Wehrle Drive		ART UNIT		
Clarence, NY 14031		1745		
		PAPER NUMBER		

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Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/630,014

Applicant(s)

RUSIN ET AL.

Examiner

Cynthia Lee

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 30 July 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) 15-25 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 July 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>7/30/2003</u> .   | 6) <input checked="" type="checkbox"/> Other: <u>IDS: 4/14/2005</u> .       |

***Election/Restrictions***

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-14, drawn to an electrochemical storage device, classified in class 429, subclass 163.
- II. Claims 15-19, drawn to a method of providing a lid, classified in class 53, subclass 485.
- III. Claims 20-25, drawn to a method of providing an electrical energy storage device, classified in class 29, subclass 729.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product. See MPEP § 806.05(h). In the instant case, the product does not require positioning a terminal lead with insulating glass sealing.

Inventions I and III are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product. See MPEP § 806.05(h). In the instant case, the product does not require that an outer surface of the terminal ferrule is in a normal orientation with the lid lower surface.

Inventions II and III are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because the combination does not require glass sealing. The subcombination has separate utility by itself as a lid.

Because these inventions are independent or distinct for the reasons given above and have acquired a separate status in the art in view of their different classification, restriction for examination purposes as indicated is proper.

Because these inventions are independent or distinct for the reasons given above and the inventions require a different field of search (see MPEP § 808.02), restriction for examination purposes as indicated is proper.

During a telephone conversation with Mr. Michael Scalise on 5/23/2006 a provisional election was made with traverse to prosecute the invention of I, claims 1-14. Affirmation of this election must be made by applicant in replying to this Office action. Claims 15-25 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim

remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

***Priority***

Acknowledgement has been made of applicant's claim for priority under 35 USC 119 (e).

***Information Disclosure Statement***

The Information Disclosure Statement (IDS) filed 7/30/2003 and 4/14/2005 has been placed in the application file and the information referred to therein has been considered.

***Drawings***

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: sprue 68 and gate 70 as described on pg 10 for Fig. 7. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Double Patenting***

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The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-14 are ~~provisionally~~ rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-3, 5-12, 14-16 of US Patent 6986796 in view of Heller (US 6010803). Although the conflicting claims are not identical, they are not patentably distinct from each other because both sets of claims recite an electrical energy storage device, a lid, and a medical implant device comprising a container, and electrode assembly, a lid with a unitary terminal ferrule extending below the lid lower surface in a insulating relationship, and a terminal lead connected to an anode or a cathode. The copending claims do not disclose a thermoplastic fluoropolymer seal. However, Heller discloses of using a nonconductive material, such as a fluoropolymer to seal the terminal ferrule (8:25-30). Further, Heller discloses that injection molding is used to manufacture a single completely integral

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cover. Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use a nonconductive material, such as a fluoropolymer, for the benefit of using a chemically stable material, and fluoropolymer that is thermoplastic for the benefit of making the insulator easier to mold when injection molding.

### ***Claims Analysis***

The limitation "machined" has been considered but was not given patentable weight because the courts have held that the method of forming the product is not germane to the issue of patentability of the product itself. *In re Thorpe*, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985). See MPEP 2113.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Heller (US 6010803).

Heller discloses an electrochemical cell comprising a container, an electrode assembly comprising an anode and a cathode, a lid having apart upper and lower surfaces joined by a peripheral edge and secured to the open end of the container to provide a casing housing the electrode assembly, wherein the lid has at least a unitary terminal ferrule extending below the lid lower surface. See Fig. 1-3. The terminal lead extends through the terminal ferrule and has a length providing a first end position

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spaced above the upper surface of the lid and a second end connected to the cathode and the terminal lead is sealed in the terminal ferrule with a fluoropolymer (6:35-40 and 8:25-30). The fluoropolymer serves as an insulator. The insulator encases the terminal ferrule at least a portion of the length of the terminal lead disposed inside the casing (see fig. 2). The lid comprises an electrically conductive material such as stainless steel, titanium, or other suitable conductive metal (5:30-35). The electrolyte must necessarily be present for the electrochemical cell to operate.

Heller discloses that the outer surface of the ferrule is provided with a series of annular rings encased by the insulator (applicant's claim 3). See fig. 2. The insulator is surrounded by an annular ring encasing the terminal ferrule (applicant's claim 5). See 221 in Fig. 2. The lid further comprises a unitary fill port extending below the lid lower surface (applicant's claim 6). See 127 in Fig. 2 and 5:45-50.

Heller discloses that the seal comprises a fluoropolymer, but does not disclose that it is a thermoplastic polymer (applicant's claims 2 and 10). However, Heller discloses that injection molding is used to manufacture a single completely integral cover. Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use a thermoplastic fluoropolymer for the benefit of making the insulator easier to mold when injection molding.

Heller does not disclose that the terminal ferrule is characterized by a roughened texture (applicant's claims 1, 4, 9, and 12). However, Heller discloses that a fillport opening comprises holding projections extending into the opening for holding a closure button (490 in Fig. 10). Further, the interior of the lid comprises a bracket projection for

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attachment of an interior component of the cell (495 in Fig. 11). Likewise, it would have been obvious to one of ordinary skill in the art at the time the invention was made to add projections or protrusions (applicant's roughened texture) to the terminal ferrule for the benefit of holding the terminal lead with a better grip.

Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Heller (US 6010803) in view of Ben Haim (US 6463324).

Heller discloses an electrochemical cell comprising a container, an electrode assembly comprising an anode and a cathode, a lid having apart upper and lower surfaces joined by a peripheral edge and secured to the open end of the container to provide a casing housing the electrode assembly, wherein the lid has at least a unitary terminal ferrule extending below the lid lower surface. See Fig. 1-3. The terminal lead extends through the terminal ferrule and has a length providing a first end position spaced above the upper surface of the lid and a second end connected to the cathode and the terminal lead is sealed in the terminal ferrule with a fluoropolymer (6:35-40 and 8:25-30). The fluoropolymer serves as an insulator. The insulator encases the terminal ferrule at least a portion of the length of the terminal lead disposed inside the casing (see fig. 2). The lid comprises an electrically conductive material such as stainless steel, titanium, or other suitable conductive metal (5:30-35). The electrolyte must necessarily be present for the electrochemical cell to operate.

Heller does not disclose that the terminal ferrule is characterized by a roughened texture. However, Heller discloses that a fillport opening comprises holding projections

extending into the opening for holding a closure button (490 in Fig. 10). Further, the interior of the lid comprises a bracket projection for attachment of an interior component of the cell (495 in Fig. 11). Likewise, it would have been obvious to one of ordinary skill in the art at the time the invention was made to add projections or protrusions (applicant's roughened texture) to the terminal ferrule for the benefit of holding the terminal lead with a better grip.

Heller discloses a medical implant device, such as a pacemaker (4:50-55). Heller further discloses all the elements of the electrochemical device as recited above, but does not disclose a control circuitry. However, Ben-Haim teaches a pacemaker with a controller for controlling the pacemaker (26 in Fig. 2A). Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to add a controller to Heller's pacemaker for the benefit of controlling the pacemaker in response to and in synchronization with a pacing pulse as applied to patient's heart, as taught by Ben-Haim (9:1-10).

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cynthia Lee whose telephone number is 571-272-8699. The examiner can normally be reached on Monday-Friday 8:30am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick Ryan can be reached on 571-272-1292. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.


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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

ckl

Cynthia Lee

Patent Examiner



RAYMOND ALEJANDRO  
PRIMARY EXAMINER